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Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the rights of indigenous peoples, in which she examines the human rights situation of Aboriginal and Torres Strait Islander Peoples, on the basis of her visit to Australia from 20 March to 3 April 2017.

In the report, the Special Rapporteur observes that the policies of the Government do not duly respect the rights to self-determination and effective participation; contribute to the failure to deliver on the targets in the areas of health, education and employment; and fuel the escalating and critical incarceration and child removal rates of Aboriginal and Torres Strait Islanders.

A comprehensive revision of those policies needs to be a national priority, and the consequences and prevalence of intergenerational trauma and racism must be acknowledged and addressed.

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Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*

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* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the rights of indigenous peoples visited Australia from 20 March to 3 April 2017. She expresses her appreciation to the Government of Australia for the support provided throughout the visit.

2. During the visit, the Special Rapporteur met with high-level representatives of the federal, state and territory governments, members of Parliament, the Parliamentary Joint Committee on Human Rights, members of the judiciary, the National Congress of Australia's First Peoples, the Australian Human Rights Commission and a broad range of Aboriginal and Torres Strait Islander organizations and representatives and civil society organizations working for their rights.

3. The Special Rapporteur held meetings in Western Australia, the Northern Territory, Queensland, the Australian Capital Territory, Victoria and New South Wales. She met with a number of indigenous communities, including in Broome, Darwin and the Torres Strait, to hear directly from indigenous peoples about their concerns and priorities. She also visited two detention facilities, Bandyup Women's Prison in Perth and Cleveland Youth Detention Centre in Townsville, and the Children's Koori Court in Melbourne.

4. Among the priorities for the visit, the Special Rapporteur reviewed the progress made in implementing recommendations made by her predecessor during his country visit to Australia in 2009 (A/HRC/15/37/Add.4), noting at the outset the limited progress that had been made by the Government to implement those recommendations.

II. Background on Aboriginal and Torres Strait Islander peoples

5. The history of the continent's first inhabitants, the Aboriginal Australians, goes back more than 50,000 years before the arrival or European settlers. At the time of colonization in 1788, it is estimated that 750,000 to 1,000,000 people lived in Australia.

6. British settlers declared the land "terra nullius" as they considered that Aboriginal Australians were nomads with no concept of land ownership. The loss of traditional land, food sources and water resources was often fatal, particularly to communities already weakened by disease. Aboriginal Australians groups had a deep spiritual and cultural connection to the land. When they were forced away from traditional areas, the cultural and spiritual practices necessary to their cohesion and well-being were destroyed.

7. During colonization, Aboriginal Australians were murdered, raped and enslaved for forced labour. Massacres occurred across Australia and, in the course of frontier conflict, it is estimated that about 2,000 British colonizers and over 20,000 indigenous Australians suffered violent deaths.[1]

8. Aboriginal people were moved to mission stations under assimilation policies to be taught European beliefs and used as cheap labour. The term "Stolen Generations" refers to Aboriginal and Torres Strait Islander children who were forcibly removed from their families and communities by government, welfare or church authorities and placed into institutional care or with non-indigenous foster families. The forced removals began around the mid-1800s and continued until the 1970s.

9. In 2008, the federal Government formally apologized to the Aboriginal and Torres Strait Islander Peoples and particularly to the Stolen Generations for the grief and suffering inflicted by laws and policies of successive Parliaments and Governments.

10. Today, indigenous peoples are estimated to constitute approximately 3 per cent of the Australian population, or 670,000 individuals. More than 400 distinct indigenous Australian peoples have been identified through their ancestral languages. The largest

[1] See http://aiatsis.gov.au/explore/articles/first-encounters-and-frontier-conflict.

indigenous populations live in the States of New South Wales and Queensland. Aboriginal and Torres Strait Islanders comprise 30 per cent of the population of the Northern Territory, the highest proportion of any state or territory. While Aboriginal and Torres Strait Islanders are more likely to live in remote rural parts of the country than the non-indigenous population, the majority of the indigenous population today lives in urban areas.

11. Stark disparities and social disadvantage persist between indigenous and non-indigenous Australians across all quality of life indicators.[2] Indigenous Australians generally experience significantly lower standards of health, education, employment and housing, and are drastically overrepresented compared with non-indigenous people in the criminal justice system, among children in out-of-home care and among victims of family violence. The Special Rapporteur deeply regrets that many of those indicators have deteriorated significantly since her predecessor's 2009 visit, and that numerous innovative and effective indigenous community-led initiatives established in recent years remain underfunded.

III. International human rights instruments and mechanisms

12. Australia has ratified most international human rights treaties. However, it has yet to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

13. The Government has publicly indicated its intention to ratify before the end of 2017 the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it signed in 2009.

14. In 2009, Australia endorsed the United Nations Declaration on the Rights of Indigenous Peoples. It has not ratified the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

15. Australia still maintains reservations to article 10 of the International Covenant on Civil and Political Rights on the humane treatment of people deprived of their liberty and to article 37 (c) of the Convention on the Rights of the Child on juvenile justice. According to the reservations, Australia restricts acceptance of its obligation to separate accused persons from convicted persons and to separate children from adults in prison.[3] The reservations have been maintained despite repeated calls for their withdrawal by the Human Rights Committee and the Committee on the Rights of the Child.[4]

16. In November 2015, the domestic rights record of Australia was reviewed for the second time as part of the universal periodic review. While the Government affirmed that it would ensure that laws and practical actions gave effect to the aims of the Declaration, it did not accept the recommendations to develop a national strategy to implement it.[5]

IV. National legal and institutional framework

17. The Australian Federal Constitution came into effect on 1 January 1901. It explicitly discriminated against "aboriginal natives" by excluding them from population counts. That reference was removed by a decision supported by a 90 per cent majority of the electorate in the 1967 referendum, which also amended the Constitution to allow the Federal

[2] www.aihw.gov.au/aboriginal-and-torres-strait-islander-peoples.

[3] See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en and https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.

[4] See CRC/C/AUS/CO/4, para. 10, and CCPR/C/AUS/CO/5, para. 9.

[5] See A/HRC/31/14, paras. 136.85-136.87, and A/HRC/31/14/Add.1, paras. 23-28 and 138.

Parliament to legislate for "people of any race for whom it is deemed necessary to make special laws". The Constitution contains few provisions for the protection of human rights, and only five explicit provisions on individual rights.[6]

18. Each of the six states and two territories in the Federation has its own parliament, government and laws. Each of the states have constitutions that recognize Aboriginal peoples, and the Queensland constitution specifically also recognizes Torres Strait Islander peoples.

19. The Council of Australian Governments is an intergovernmental entity, chaired by the Prime Minister, comprising the federal, state and territory governments. Its role is to manage matters of national significance or matters that need coordinated action by all Governments of Australia.[7] The "Closing the Gap" strategy on reducing indigenous disadvantage in health, education and unemployment was adopted jointly by the Council in 2008 and enjoys bipartisan support. The Prime Minister presents an annual national progress report to Parliament.[8]

20. The Australian Human Rights Commission is an independent national human rights institution with statutory responsibilities under the federal Australian Human Rights Commission Act 1986, the Racial Discrimination Act 1975 and the Native Title Act 1993. The Aboriginal and Torres Strait Islander Social Justice Commissioner monitors the enjoyment and exercise of human rights for indigenous Australians and tables an annual report in Parliament.[9] On 1 April 2017, the Special Rapporteur was delighted to meet with June Oscar, the first indigenous woman to take up the position of Aboriginal and Torres Strait Islander Social Justice Commissioner.

21. The Parliamentary Joint Committee on Human Rights is established by the Human Rights (Parliamentary Scrutiny) Act 2011. Its main function is to examine all bills and legislative instruments for compatibility with the seven core human rights treaties to which Australia is a party, and to report to Parliament on its findings.[10] The Special Rapporteur was pleased to meet with the Committee members and discuss with them their important findings in their review of the "Stronger Futures" legislation in the Northern Territory and their inquiry on proposed amendments to the Racial Discrimination Act.

V. Principal human rights concerns

A. Constitutional recognition, treaty and truth commission

22. The Special Rapporteur commends the bipartisan political support since 2011 for ensuring recognition of Aboriginal and Torres Strait Peoples in the Constitution. The consultations, led by the Referendum Council[11] through a series of dialogue meetings with indigenous representatives across the country, play a key role in informing that process. The Special Rapporteur met with the Co-Chairs of the Referendum Council and briefly took part in the consultation in Cairns.

23. Constitutional recognition of indigenous peoples is of fundamental importance as it celebrates the history and cultural heritage of the First Peoples of Australia and provides a key measure of reconciliation by acknowledging to their role in the national identity. While recognizing the complexities constitutional change entail (i.e. requiring the majority vote both of the population and of the States), the Special Rapporteur notes that the government initiative has dragged on for nearly a decade. Already at the time of her predecessor's visit in 2009, the Government had recognized the need for constitutional recognition.

[6] See www.humanrights.gov.au/how-are-human-rights-protected-australian-law.
[7] See www.coag.gov.au/about-coag.
[8] See http://closingthegap.pmc.gov.au/.
[9] See www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice.
[10] See www.aph.gov.au/joint_humanrights.
[11] See www.referendumcouncil.org.au/.

24. Indigenous peoples informed the Special Rapporteur about complementary proposals to negotiate treaties with the Government and to establish a truth commission to ensure better public recognition of the structural powerlessness inflicted through history. Such measures would pay tribute to the unique role of Aboriginal and Torres Strait Islanders in Australian society, recognize their rights and contribute to better public awareness of how past policies and practices have conditioned and curtailed their present participation in Australian society.

25. The Special Rapporteur notes as very positive that the governments of Victoria, South Australia and the Northern Territory are already leading initiatives to seek a treaty with Aboriginal peoples.

26. After her visit, the Special Rapporteur was informed of the outcome of the consultation process adopted on 26 May 2017, referred to as "the Uluru Statement of the Heart". It calls for the establishment of a "First Nations Voice" enshrined in the Constitution and of a "*makarrata*" commission to supervise an agreement process between governments and First Nations that would include truth-telling about Aboriginal and Torres Strait Islander peoples' history.[12] The Referendum Council presented its final report to the Prime Minister and the Leader of the Opposition on 30 June 2017.

B. Racism and racial discrimination

27. During the visit, the Government regretfully decided for the second time since 2014 to pursue a bill to amend section 18C of the Racial Discrimination Act. The Parliamentary Joint Committee on Human Rights reviewed the Act in its comprehensive inquiry and report, presented in February 2017, on whether the it imposes unreasonable restrictions on freedom of speech.[13]

28. The Special Rapporteur was further disheartened by the fact that the Government had chosen to launch the bill on 21 March, the International Day for the Elimination of Racial Discrimination. The proposed changes to the provisions would replace the terms "offend, insult, humiliate" with the term "harass", and would include the notion of the "reasonable member of the Australian community" as the standard by which any acts would be judged, rather than by members of the affected community. Indigenous organizations were excluded from participating during the Senate debate on the draft bill. The draft bill was defeated in the Senate, which hopefully marks the end of the matter.

29. While recognizing the need to balance the right to freedom of expression with the protection against racial discrimination, the Special Rapporteur wishes to underline that the debate on this issue has been hugely damaging for the trust that indigenous peoples have in the Government. It has also sent the unfortunate signal to the public and the media that racial vilification is permissible and risks undermining efforts by the Government to seek reconciliation with Aboriginal and Torres Strait Islander peoples.

30. The Special Rapporteur found deeply disturbing the numerous reports on the prevalence of racism against Aboriginal and Torres Strait Islander Peoples. Racism manifests itself in different ways, ranging from public stereotyped portrayals as violent criminals, welfare profiteers and poor parents, to discrimination in the administration of justice. Aboriginal doctors and patients informed the Special Rapporteur about their experiences of racism within the medical sector and their reluctance to seek services from mainstream medical providers. Institutional racism has been identified in the National Aboriginal and Torres Strait Islander Health Plan (2013-2023) and its implementation plan as a significant barrier in the delivery of health care.[14] Support for Aboriginal and Torres Strait Islander managed medical services is indispensable for improving health indicators

[12] See www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF.

[13] See www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/FreedomspeechAustralia.

[14] See www.health.gov.au/natsihp.

and overcoming disadvantage. Greater cultural awareness raising among non-indigenous medical professionals is also required.

31. There are also more subtle elements of racism, stemming from the failure to recognize the legacy of two centuries of systemic marginalization. The mainstream education system contains inadequate components on Aboriginal and Torres Strait Islander history and the impact of colonization. The non-recognition of the socioeconomic exclusion and the impact of intergenerational trauma on indigenous peoples continue to undermine reconciliation efforts. In order to truly recognize the situation of Aboriginal and Torres Strait Islanders today, there needs to be much greater public awareness of their perspectives on history and the consequences of past policies and legislation, including the long-term damage and rupture of social bonds caused by the forced removal and institutionalization of their children.

C. Human rights legislative framework

32. Australia does not have a bill of rights. In view of the ongoing difficulties in harmonizing international human rights obligations in federal, state and territory legislation, the Special Rapporteur considers that a more comprehensive human rights legislative framework would provide stronger protection for the rights of indigenous peoples.

33. The Special Rapporteur notes as positive that developments at the state level are leading the way, notably through the Human Rights Act 2004 of the Australian Capital Territory and the Charter of Human Rights and Responsibilities Act 2006 (Victoria). She was furthermore encouraged to hear that the Human Rights Act 2004 was recently amended to insert a specific provision to protect the cultural rights of Aboriginal and Torres Strait Islanders, with specific reference to the United Nations Declaration on the Rights of Indigenous Peoples.

D. Self-determination and participation

34. When Australia officially endorsed the Declaration in 2009, the Government stated its intent to reset relations between indigenous and non-indigenous Australians and to build trust in order to work together to overcome the legacy of the past and shape the future together. Furthermore, in its pledge as part of its candidacy to become a member of the Human Rights Council for the period 2018-2010, Australia committed itself to giving practical effect to the outcome document of the Declaration and the World Conference on Indigenous Peoples.

35. Self-determination is a fundamental element of the Declaration whereby indigenous peoples have the right to determine their political status freely and pursue their economic, social and cultural development freely (art. 3) and have the right to autonomy or self-government in matters relating to their internal and local affairs, and the ways and means for financing their autonomous functions (art. 4). The Declaration also states that indigenous peoples have the right to participate in decision-making in matters that affect their rights (art. 18).

36. While Australia has adopted numerous policies aiming to address the socioeconomic disadvantage of Aboriginal and Torres Strait Islander peoples, the failure to respect their rights to self-determination and to full and effective participation is alarming. The compounded effect of these policies has contributed to the failure to deliver on the targets in the areas of health, education and employment in the "Closing the Gap" strategy and has contributed to aggravating the escalating incarceration and child removal rates of Aboriginal and Torres Strait Islanders.

E. Indigenous Advancement Strategy

37. The Special Rapporteur was informed that the "Indigenous Advancement Strategy", initiated by the Government in 2014, entailed a radical cut of $A534 million to Aboriginal

and Torres Strait Islander programmes and required competitive tender bids for organizations providing services to indigenous communities. The Strategy centralized programmes to the Department of the Prime Minister and Cabinet, and its implementation has been bureaucratic and rigid and has wasted considerable resources on administration. As the Special Rapporteur travelled across the country, she was told repeatedly about the dire consequences of the Strategy.

38. The Strategy has effectively undermined the key role played by indigenous organizations in providing services for their communities. Around 55 per cent of the initial tenders were awarded to non-indigenous organizations, which shifted implementation to mainstream organizations that were neither run by Aboriginal and Torres Strait Islanders nor based in their communities. Many indigenous organizations were forced to close or drastically downsize and reduce the basic services they had been providing to their communities in the areas of health, housing and legal services. Non-indigenous organizations that fly in and fly out of communities have executed projects in culturally inappropriate ways and further undermined capacity-building in local indigenous-led organizations.

39. The Special Rapporteur observes that the Strategy has had a devastating impact on indigenous organizations and has dented their trust in the Government. It runs contrary to the principles of self-determination and participation and the publicly expressed commitment of the Government to doing things with rather than to Aboriginal and Torres Strait Islander people.

40. However, the Special Rapporteur notes as positive the statement made by the Minister for Indigenous Affairs during their meeting, in which he recognized the importance of making indigenous-led organizations responsible for implementing local programmes and stating that the ambition of the Government was to transfer such responsibility fully to indigenous organizations.

41. Notwithstanding, the Special Rapporteur finds it disconcerting that numerous representatives of indigenous organizations informed her of reprisals levied against them in the form of their exclusion from consultations on key policies and legislative proposals. Furthermore, she is deeply troubled by information indicating that funding cuts have specifically targeted organizations undertaking advocacy and legal services and that provisions inserted in funding agreements restrict the freedom of expression. She notes that the Special Rapporteur on human rights defenders raised the similar concerns during his country visit to Australia in October 2016.[15]

F. National Congress defunding

42. Since 2014, the explicit defunding by the Government of the national representative body for indigenous peoples, the National Congress of Australia's First Peoples, runs counter to the stated commitment of the Government to working with indigenous peoples. The establishment of the Congress in 2010 followed extensive consultations among indigenous peoples and is in accordance with article 18 of the Declaration, which states that indigenous peoples have the right "to participate in decision-making in matters which affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions". The Declaration also affirms in its article 39 that indigenous peoples have the right "to have access to financial … assistance from States … for the enjoyment of the rights contained in this Declaration".

43. In 2013, in a parallel move, the Government established the Indigenous Advisory Council, which reports directly to the Prime Minister. While the Council is composed of indigenous experts in specific areas, it is not representative of Aboriginal and Torres Strait Islander peoples as its members are appointed by the Prime Minister.

[15] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E.

44. The Special Rapporteur recalls that the Government accepted, in the context of the universal periodic review in 2015 to "continue to support indigenous institutions that bring cohesion to communities, such as the National Congress of the First Peoples of Australia".[16] Financial and political support for the Congress to operate effectively is crucial to prove the commitment of the Government to advancing indigenous rights. Following her visit, the Special Rapporteur was informed by the Government that some funding for the Congress had been reinstated. However, she is concerned that funding remains insufficient for the Congress to exercise its mandate fully.

45. While in Canberra, the Special Rapporteur met with the Aboriginal and Torres Strait Islander Elected Body of the Australian Capital Territory, which is currently the only such body in the country at the state or territory level. The body meets on a regular basis with the Government of the Australian Capital Territory to discuss policy issues and offers a positive model for engagement with indigenous peoples.

G. Closing the Gap strategy

46. The "Closing the Gap" strategy has been in existence for nearly a decade. However, in its 2017 report on health, education and unemployment targets,[17] the Government recognizes that only one of the seven targets — to halve the gap in Year 12 attainment rates — is on track. The Government did not expect to meet targets to close or reduce the gap in the remaining six targets, including on life expectancy, infant mortality, education and employment. Aboriginal and Torres Strait Islander peoples continue to die on average 10 years younger than other Australians, with no major improvements being recorded. In the Northern Territory, the life expectancy of Aboriginal people is the lowest in the nation and the gap between the non-indigenous population is 16 years for men and 14 years for women.

47. It is woefully inadequate that, despite having enjoyed over two decades of economic growth, Australia has not been able to improve the social disadvantage of its indigenous population. The existing measures are clearly insufficient as evidenced by the lack of progress in achieving the "Close the Gap" targets.

H. Health services

48. Social and cultural determinants explain almost one third of the health gap between indigenous and non-indigenous people. In 2015, nearly 45 per cent of indigenous peoples reported having a disability or long-term health condition. Understanding the impacts of intergenerational trauma and racism are essential factors in order to address the health situation of indigenous peoples effectively.

49. The Government has taken steps to improve the health of indigenous peoples through the National Aboriginal and Torres Strait Islander Health Plan 2013-2023, and the Special Rapporteur notes as positive that the plan adopts a human rights-based approach informed by the Declaration.[18]

50. In order for the Implementation Plan for the Health Plan to be successful, the Government must invest in partnerships that recognize the leadership of Aboriginal and Torres Strait Islanders. The workforce of indigenous Australian medical professionals has expanded in the past decade and developed valuable expertise. However, parity is still lagging as Aboriginal and Torres Strait Islanders still make up less than 1 per cent of the national health workforce. Support for training more indigenous health professionals is therefore required.

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[16] See A/HRC/31/14/Add.1, para. 28, in which Australia accepted the recommendation in para. 136.87 of A/HRC/31/14.

[17] See http://closingthegap.pmc.gov.au.

[18] See www.health.gov.au/internet/publications/publishing.nsf/Content/oatsih-healthplan-toc~framework.

51. Aboriginal Community Controlled Health Services have achieved remarkable success in delivering culturally appropriate services for primary health care. However, the Special Rapporteur was informed by multiple stakeholders during her visit about inequalities in the resources available for rural and remote service delivery and of cuts to community managed primary health care, which play an essential role, for example in the prevention of chronic diseases.

52. Aboriginal and Torres Strait Islanders also told the Special Rapporteur about their feelings of powerlessness, loss of culture and lack of control over their lives. Suicide rates among Aboriginal and Torres Strait Islander people are escalating at a shocking rate and are double that of non-Indigenous Australians. The current situation was described to the Special Rapporteur as a suicide epidemic. While visiting the Kimberley region in Western Australia, she learned about youth-developed and -driven projects to prevent suicide among Aboriginal adolescents. She strongly urges that such initiatives be supported and replicated. Adopting a holistic approach to social and emotional well-being that recognizes the need for cultural connection is essential to achieve sustainable improvement in health indicators.

53. Aboriginal-led health research capacity has been established and should be drawn upon to inform policies. Strengthened financial and political support for Aboriginal- and Torres Strait Islander-led expertise, professional development and research is crucial in order to close the gap in relation to key health inequalities faced by indigenous peoples. In order for such measures to be sustainable, longer-term funding agreements are necessary.

I. Access to education

54. In the area of education, large gaps remain, notably between children living in urban versus remote areas. Despite the adoption of the National Aboriginal and Torres Strait Islander Education Strategy, there had been no real change in school attendance rates between 2014 and 2016. The Special Rapporteur was informed that Aboriginal community involvement in early childhood, primary and secondary education has declined over the past decade, particularly in the formulation and delivery of programmes, and that centralized decision-making without appropriate cultural awareness has led to poor policies and practices in Aboriginal education.

55. It is essential to increase parents' and community engagement with schools, for example, by introducing Aboriginal parents' groups in schools or community-controlled school boards. A trauma-informed approach to education should identify the barriers to attendance and help parents and families to improve it. The current application of financial penalties should be discontinued as they further disadvantage children who already live in poverty, and who are likely to be exposed to overcrowded and poor housing, family violence, chronic illnesses and food insecurity. Unless such action is taken, Aboriginal children, especially in remote areas, are set up to fail.

56. Regrettably, Aboriginal languages are seen as a barrier to education rather than an asset, and bilingual education programmes have been wound back in remote communities. The lack of secondary school provision in remote communities forces parents to send children to secondary boarding schools, far away from family, community and their country.

J. Unemployment and housing shortage

57. Equal opportunity of employment is critical to overcoming disadvantage. Efforts to reach the "Closing the Gap" target of halving the gap in employment between indigenous and non-indigenous Australians within a decade (by 2018) have been unsuccessful and rather indicate negative trends. The national unemployment rate for Aboriginal and Torres Strait Islander people is 20.8 per cent, compared with the national average of approximately 5-6 per cent.

58. In 2015, the Government introduced the Community Development Programme in remote areas. Among the jobseekers enrolled in the Programme, 83 per cent identify as

Aboriginal and Torres Strait Islander people.[19] The Programme imposes an inflexible digitalized regime on recipients that issues penalty notices and docks their pay for missed scheduled work. Under the Programme, contracted organizations that provide employment have fewer opportunities to tailor engagement strategies to local communities or to particular individuals. The rate at which jobseekers within the Programme are penalized is around 27 times that of mainstream, predominantly non-indigenous, jobseekers. In practice, these requirements are discriminatory, being substantially more onerous than those that apply to predominantly non-indigenous jobseekers.

59. Housing remains in short supply in many indigenous communities, and low levels of income have forced people into overcrowded or dilapidated housing. While in Darwin, the Special Rapporteur visited Aboriginal town camps and was appalled by the dismal conditions therein, in particular the lack of basic sanitation services. The helplessness and shame that many feel when they are unable to find work results in the entrenchment of poverty and money being spent on illicit substances as opposed to basic needs. The high rates of homelessness, overcrowding and poor housing have a high impact on Aboriginal and Torres Strat Islander health indicators and fuel the disproportionately high rates of Aboriginal children entering the child protection and youth detention systems.

K. Compulsory income management

60. The application of a compulsory income management scheme was a key feature of the "Northern Territory Intervention" and persist through its successor, the "Stronger Futures" legislation. The vast majority of those affected by the measures are Aboriginal and Torres Strait Islanders. In 2009, the previous Special Rapporteur criticized the impact that the Intervention had had, and specifically the suspension by the Government of the Racial Discrimination Act, which had removed legal protections for Aboriginal peoples in the Northern Territory.

61. While the Racial Discrimination Act was reinstated in December 2010 and legislation was revised and renamed "Stronger Futures" in 2012, it continues to apply punitive measures. During her visit to the Northern Territory, Aboriginal communities told the Special Rapporteur of how they feel stigmatized by being subjected to compulsory income management, forced participation in "work for the dole" schemes (that pay individuals far less than an average reward rate) and the application of fines and welfare reductions for parents whose children play truant from school. As part of the compulsory income management scheme, welfare payments are partially quarantined and provided through a "BasicsCard", which restricts people's purchases to specific stores and items. The Special Rapporteur was told by users of the card that it causes humiliation, for example as certain shops require them to queue separately.

62. The administrative costs of running the scheme are very high, and the Special Rapporteur was informed that this has drained financial resources that could have been better invested in improving housing conditions.

63. The Parliamentary Joint Committee on Human Rights, in its 2016 review of the "Stronger Futures" measures, described the scheme as an "intrusive measure that robs individuals of their autonomy and dignity and involves a significant interference into a person's private and family life".[20]

64. In a parallel development, the Special Rapporteur notes that voluntary income management is being trialled in two "empowered communities" following specific requests from the community. Unlike under the compulsory income management scheme in the Northern Territory, local indigenous communities have participated actively in this policy design. The impact of voluntary income management has yet to be fully assessed.

[19] See www.dpmc.gov.au/indigenous-affairs/employment/community-development-programme-cdp.

[20] See http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures2/Final_report.

65. The Special Rapporteur was informed that certain Aboriginal women's organizations are in favour of income management measures as they consider that these have improved the safety of women and children as well as food security.

L. Incarceration and the administration of justice

66. The administration of justice and detention practices were raised as key concerns during the country visit. The extraordinarily high rate of incarceration of Aboriginal and Torres Strait Islanders, including women and children, is a major human rights concern. While Aboriginal and Torres Strait Islanders make up only 3 per cent of the total population, they constitute 27 per cent of the national prison population. More than half of the children in detention are Aboriginal and Torres Strait Islanders. In some detention facilities, such as in the Northern Territory and in the Cleveland Youth Detention Centre in Queensland, indigenous children constitute an astonishing 90 per cent of the detainees, which prima facie raises concerns over racial discrimination in the administration of justice.

67. The proportion of Aboriginal and Torres Strait Islanders continues to rise and is expected to reach 50 per cent of the overall prison population by 2020. Despite the comprehensive recommendations issued to address incarceration rates over 25 years ago in the Royal Commission into Aboriginal Deaths in Custody in 1991, the indigenous prison population has on the contrary doubled during that period. The reasons for the overrepresentation of Aboriginal and Torres Strait Islanders in Australian prisons are manifold. Imprisonment is the end result of years of dispossession, discrimination and intergenerational trauma faced by Aboriginal and Torres Strait Islanders. It is also caused by the lack of political will to address the situation, despite that key measures for improvement have been repeatedly identified by a string of national and state inquiries, royal commissions, coroners' reports and international human rights monitoring mechanisms.

68. Current laws and policies continue to contribute to the swift escalation in the incarceration rates of Aboriginal and Torres Strait Islanders. Though not explicitly targeted at those populations, their disproportionate impact is clear. For instance, paperless arrests laws in the Northern Territory, which allow the police to detain a person for several hours if they have committed or are suspected to have committed a minor offence, have led to a dramatic increase in the number of indigenous persons in police custody. Bail laws and policies have become more restrictive in most States and Territories and have led to a significant increase in the number of Aboriginal and Torres Strait Islanders held on remand. Longstanding calls for the abolishment of mandatory sentencing laws, notably in Western Australia, continue to be ignored. The current inquiry by the Australian Law Reform Commission into the Incarceration of Aboriginal and Torres Strait Islander Peoples should help identify laws that need to be amended to reduce such incarceration, and the Government must act on those laws to impede this national crisis, which has devastating effects on the indigenous community.

69. Funding for legal services for Aboriginals and Torres Strait Islanders has been reduced since 2015, which has had a significant impact on Aboriginal and Torres Strait Islanders, who have higher rates of unmet legal needs, owing inter alia to not speaking English as their first language and having lower literacy skills. High-quality and culturally competent legal assistance services are critical to ensure access to justice for Aboriginal and Torres Strait Islanders and to reduce imprisonment. The Special Rapporteur is pleased to learn, that subsequent to her visit, federal funding cuts for Aboriginal and Torres Straits Islander legal services were reversed in May 2017. A national mapping of unmet legal needs has however yet to be undertaken, a step that is essential in order to overcome the persistent disadvantage and to address effectively incarceration rates.

70. Since the 1991 Royal Commission into Aboriginal Deaths in Custody, there have been over 340 deaths of Aboriginal and Torres Strait Islanders in detention. Certain deaths have been caused by the negligence of the staff responsible for the care of the person in custody. This was the case for Ms. Dhu, a 22-year-old indigenous woman who died within 48 hours of being taken into police custody in Western Australia in August 2014. She

received inadequate medical care and suffered police actions described by the Coroner as "unprofessional and inhumane".[21] The Special Rapporteur met with officials of the Coroner's Court of Western Australia, which conducted the inquest into the death of Ms. Dhu, and made important recommendations that must be implemented as a matter of priority in order to prevent similar deaths in custody. Since the State Coroner does not examine issues of civil or criminal liability, it remains important to investigate such matters, including in the case of Ms. Dhu.

71. Among the numerous recommendations of the Royal Commission into Aboriginal Deaths in Custody that the Government has still failed to implement, is the adoption of custody notification services throughout the country. Next of kin should be informed that their relative has been taken into custody as a minimum safeguard against irregular detention practices. Such notification services, despite not carrying major cost implications, are currently only available in New South Wales and the Australian Capital Territory.

72. Ms. Dhu was in police custody for fine default. In Western Australia, a growing number of Aboriginal women find themselves unable to pay fines and are taken into custody as result. The Special Rapporteur visited Bandyup prison, a women's prison in Perth, where Aboriginal women comprised 48 per cent of the detainees. She is particularly concerned to learn that many of the Aboriginal women had no access to housing when they came out of prison. As a result of incarceration, many women also struggled to keep ties with and to regain custody of their children. The laws on fine default are an example of legislation having a disproportionate impact on Aboriginal women.

73. Aboriginal women and girls are the fastest growing prison population across the country. As pointed out by the Special Rapporteur on violence against women, its causes and consequences during her visit to Australia in February 2017, many incarcerated women and girls have been the victims of domestic violence and sexual abuse.[22] Despite knowledge of such victimization, detention facilities lack support services for women who have suffered sexual assault and were in fact cut in Bandyup prison in 2016. Gender-sensitive measures are required to reduce rates of imprisonment of Aboriginal women and girls and should be developed based on consultations directly with them.

74. Aboriginal and Torres Strait Islander children are 24 times more likely to be detained than non-indigenous children. The Special Rapporteur found the routine detention of young indigenous children the most distressing aspect of her visit. In Cleveland Youth Detention Centre, she met several children as young as 12 years old. Many of the children had already been detained several times at the same facility and more or less gone straight from out-of-home care into detention. The majority of the detained children are on remand.

75. The application of criminal responsibility as low as at the age of 10 years across the country is deeply troubling and below international standards. This situation is aggravated by the failure to apply diversion measures and community programmes and the placement of children in high-security facilities, such as the Cleveland Youth Detention Centre. All personnel in detention facilities should receive training on culturally sensitive child care. The facility is strictly regulated and run based on punitive measures for misdemeanours as minor as overstaying in the pool in the facility.

76. Several sources, including judges, informed the Special Rapporteur that, in the majority of instances, the initial offences committed by children were minor and non-violent. In such cases, it is wholly inappropriate to detain children in punitive, rather than rehabilitative, conditions. Aboriginal and Torres Strait Islander children are essentially being punished for being poor and, in most cases, prison will only perpetuate the cycle of violence, intergenerational trauma, poverty and crime. The Special Rapporteur was alarmed that several of the young children she spoke to detention did not see any future prospects for themselves.

77. As already recommended several times over the past two decades by the Committee on the Rights of the Child, the Special Rapporteur urges Australia to increase the age of

[21] See www.coronerscourt.wa.gov.au/_files/dhu%20finding.pdf.

[22] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21243&LangID=E.

criminal responsibility. Children should be detained only as a last resort, which certainly is not the case today for Aboriginal and Torres Strait Islander children. Detention of those children has become so prevalent in certain communities that some parents referred to it as an achievement that none of their children has been taken into custody so far. Much more should be done to ensure that the detention of children remains the exception, rather than the norm.

78. If Aboriginal and Torres Strait Islander children are detained, they should be treated with respect and dignity. As demonstrated by the ongoing investigation of the Royal Commission into the Protection and Detention of Children in the Northern Territory, there have been allegations of serious abuses, including violent strip-searches, teargassing, hooding and prolonged isolation committed against Aboriginal children in custody.

79. In both Bandyup prison and Cleveland Youth Detention Centre, the Special Rapporteur noted that persons on pretrial remand detention were held together with convicted persons, which raises serious concerns under article 10 (2) of the International Covenant on Civil and Political Rights. She also found deeply troubling the presence of Aboriginal persons with cognitive impairment in detention without any support for their medical condition. The Special Rapporteur was furthermore concerned to learn that children aged 17 were still being held in adult prisons in Queensland.

80. The Special Rapporteur welcomes the recent announcement by the Government that Australia intends to ratify Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment before the end of 2017, which will require the establishment of a national system of independent and regular monitoring of all places of detention, a measure that the country is in dire need of. The Special Rapporteur visited the Office of the Inspector of Custodial Services in Western Australia, which offers a good model and should be replicated in other states and territories, with an added mandate to cover police custody.

81. Adequate and culturally appropriate health services in detention facilities are lacking and should be ameliorated by the targeted recruitment of Aboriginal health professionals. The Special Rapporteur furthermore recommends that more efforts be made to train and recruit Aboriginal and Torres Strait Islander police, legal professionals and prison personnel. All non-indigenous staff should be trained in cultural sensitivity.

82. The focus urgently needs to move away from detention and punishment towards rehabilitation and reintegration. Locking up people costs tax payers vast amounts of money. For instance, the Special Rapporteur was told that detaining a child costs between $A170,000 and $A200,000 per year. Such funds should be allocated to prevention and reintegration. In that regard, the Special Rapporteur learned about local diversion initiatives, often referred to as justice reinvestment programmes, designed to address the causes of crime in specific communities. In Redfern, a suburb of Sydney, she visited the "Clean Slate Without Prejudice Programme", which is run by an Aboriginal organization in collaboration with the police and has contributed to a significant decrease in the crime rate there over the past few years. Diversion programmes would significantly reduce incarceration rates if replicated across the country in consultation with local communities.

83. The Special Rapporteur was impressed with the Children's Koori Court in Melbourne, which involves the participation of elders and respected persons from the Koori community in its procedures and aims to reduce imprisonment and recidivism. Such culturally sensitive processes could significantly reduce recidivism rates if extended to other jurisdictions.

84. The Special Rapporteur notes the report "Prison to Work", endorsed by the Council of Australian Governments in December 2016, which provides valuable proposals for reintegration and places emphasis on the need for enhanced and culturally appropriate services, notably in the areas of employment, housing and welfare, following prison release, in order to reduce recidivism. She encourages the federal, state and territory governments to take concrete action and allocate funding to implement those proposals.

85. The high rates of incarceration were described to the Special Rapporteur as a tsunami affecting indigenous peoples with devastating consequences for concerned

individuals and communities. The Federal Government has recognized that incarceration is a national concern, including by its request in October 2016 that the Australian Law Reform Commission conduct an inquiry into incarceration rates of Aboriginal and Torres Strait Islander peoples. However, as long as the issue of overrepresentation of indigenous peoples in custody is not addressed in practice and continuously monitored, there will only be limited progress in closing the gap in the areas of health, education and employment. The "Change the Record" coalition of Aboriginal and Torres Strait Islander and civil society organizations has provided an excellent blueprint of recommendations [23] for concrete measures that would provide swift improvements of detention conditions.

86. The current claim by the Government that matters relating to incarceration remain the sole prerogative of states is untenable in the severe and worsens the impact of the national detention crisis on the Aboriginal and Torres Strait Islander peoples. The Special Rapporteur underlines that it is the responsibility of the federal Government to ensure compliance with international human rights obligations. The inclusion of targets on justice in the "Closing the Gap" strategy and the development and implementation of a national plan of action are needed to address the incarceration crisis.

M. Removal of children

87. Indigenous children are removed from their families at increasingly high rates. The prolonged impacts of intergenerational trauma from the Stolen Generations, disempowerment and entrenched poverty continue to inform Aboriginal and Torres Strait Islanders' experiences of child protection interventions. The Special Rapporteur was told of the grief and helplessness felt by parents and children owing to their separation, and the link this has to high rates of mental illness and substance abuse.

88. In 1997, the year in which the report entitled "Bringing Them Home" was published (see para. 92), Aboriginal and Torres Strait Islander children constituted 20 per cent of children in out-of-home care. By 2016, that figure had increased to 36 per cent, with Aboriginal and Torres Strait Islander children being 10 times more likely than non-indigenous children to be in out-of-home care.

89. The Aboriginal and Torres Strait Islander Child Placement Principle was first implemented in 1983 with the purpose of enhancing and preserving Aboriginal children's sense of identity through the prevention of out-of-home care, reunifying children with their families, ensuring culturally connected placements and enabling the participation of Aboriginal and Torres Strait Islander families and communities in child protection decision-making. Despite that, the incidence of indigenous children in out-of-home care is increasing rapidly and has reached critical levels. In 2016, on average, only 66 per cent of Aboriginal and Torres Strait Islander children for whom child protection measures were ordered were placed within their family, kin and community; the Government is failing to comply with the Principle.

90. Greater engagement with the Aboriginal and Torres Strait Islander family and community in decision-making processes around child protection is crucial. Community-led early intervention programmes that invest in families would prevent children from being in contact with the child protection system in the first place.

91. The number of Aboriginal and Torres Strait Islander children in out-of-home care is predicted to almost triple by 2035. Measures must therefore be put in place urgently. To monitor the situation, an Aboriginal children's commissioner in each state and territory and a national coordinating entity could play a valuable role. Development, in consultation with peak indigenous organizations, should be considered of a national strategy to eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care.

[23] See https://changetherecord.org.au/the-solutions.

N. Stolen Generations and reparation

92. 2017 marks the twentieth anniversary of the publication of "Bringing Them Home",[24] the report on "stolen children" that concluded that the forced removal of Aboriginal and Torres Strait Islander children had been genocidal and had constituted a crime against humanity for which reparation was due under international law. The forced removals had ruptured cultural ties, broken down family and social structures and resulted in intergenerational trauma that continued to disadvantage indigenous communities. There were links between past and present child removal practices as indigenous peoples who had themselves been placed in institutions never experienced growing up in a family environment, placing them at a disadvantage in developing their own parenting skills. The Special Rapporteur learned about instances where three generations of children had been removed from their families and placed in institutions.

93. The Special Rapporteur welcomes the ongoing Stolen Generations reparations schemes in New South Wales and South Australia and the reparations already paid in Tasmania, and reiterates the recommendation in "Bringing Them Home", also supported by the Australian Human Rights Commission, that a comprehensive national mechanism be established to ensure that adequate reparations, including compensation, are provided to the victims of the Stolen Generations policies.

O. Violence against women

94. Discrimination against Aboriginal and Torres Strait Islander women on the grounds of gender, race and class is structurally and institutionally entrenched. This discrimination, coupled with the lack of culturally appropriate measures to address the issue, fosters a disturbing pattern of violence against Aboriginal and Torres Strait Islander women. Indigenous women are 10 times more likely to die of violent assault and 32 times more likely to be hospitalized as a result of violence-related assault compared with non-indigenous women.

95. Those statistics may not reflect the actual numbers owing to high underreporting rates, estimated at 90 per cent. Underreporting is related to the issue of distrust of the current system, highlighting the importance of Aboriginal community-led programmes where women can regain trust and seek out culturally safe service provision. Some women do not report family violence out of fear that their children may be removed. The Special Rapporteur was troubled by information indicating that certain Aboriginal family violence prevention legal services had to turn away 30 to 40 per cent of women seeking assistance owing to a lack of resources. She urges that additional financial support to those legal services be provided and based on a national needs-based assessment.

96. Family violence is an intersectional concern that overlaps with homelessness, poverty, incarceration, health and the removal of children. If not tackled comprehensively, family violence will remain cyclical and undermine efforts to address related issues. In 2016, the Government launched the Third Action Plan of the National Plan to Reduce Violence Against Women and Their Children, which lists among its priorities Aboriginal and Torres Strait Islander women and children. However, the Special Rapporteur concurs with the Special Rapporteur on violence against women that a specific national action plan on violence against Aboriginal and Torres Strait Islander women is needed and should be developed in close consultation with indigenous women and other relevant stakeholders.

P. Political participation

97. Currently only 50 per cent of the Aboriginal and Torres Strait Islander population is on the electoral role. This is partly due to eligible voter criteria, including the requirement of a fixed address and a ban on voting by prisoners serving a sentence of more than three

[24] See https://healingfoundation.org.au/bth20/.

years, which disproportionately affects indigenous peoples.[25] The Special Rapporteur was informed about measures in place by the Australian Electoral Commission to increase the number of indigenous voters, but urges that those measures be reinforced, in consultation with indigenous communities and organizations, as a matter of priority in order to improve Aboriginal and Torres Strait Islanders' exercise of their right to political participation.

Q. Land rights and native title

98. As with other indigenous peoples around the world, land rights are central to the cultural identity and economic development of Aboriginal and Torres Strait Islanders. 2017 marks the twenty-fifth anniversary of the landmark Mabo decision, which held that the common law of Australia recognized native titles held by indigenous peoples to their traditional lands. The decision led to the adoption of the Native Title Act 1993 (Cth), which set out the processes for determining native title rights. The rights of Aboriginals and Torres Strait Islanders to around 30 per cent of the land area of the country are formally recognized, yet in most instances only "non-exclusive" rights are recognized. A further 27 per cent of Australia territory is subject to native title claims, processes that are extremely protracted.

99. In order to succeed, claimants under the Native Title Act must prove that they have had an uninterrupted connection to the area being claimed, and that they have continued to practice their traditional laws and customs. This is an extraordinary challenge and burden of proof in the context of the historical forced removal and dispossession policies of Australia. The Special Rapporteur furthermore notes the complex system with multiple and overlapping legal regimes applicable to native title claims and land rights at the federal, state and territory levels. There are insufficient indigenous legal professionals with expertise on land rights claims, which continues to disadvantage communities seeking to exercise their rights.

100. Aboriginal and Torres Strait Islanders have been negotiating Indigenous Land Use Agreements for years in order to, for instance, resolve native title claims or benefit from development activities carried out on their lands. While some Agreements are controversial, others are not and have brought important economic benefits for indigenous communities.

101. In its *McGlade* decision of 2 February 2017, the Federal Court created legal uncertainty by requiring that, in order to be valid, indigenous land use agreements should be signed by all native title claimants. The Government reacted by proposing a bill to amend the Native Title Act. The bill, passed on 14 June 2017, validates existing agreements already negotiated and registered before the *McGlade* decision, even though they had not been signed by all native title claimants. In that regard, the Special Rapporteur recalls that the principle of free, informed and prior consent does not require the consent of all. Having said that, there are many different types of indigenous land use agreements and some have far-reaching consequences on native title rights and even lead to the surrender of all native title (as in the *McGlade* case).

102. The Special Rapporteur appreciated learning about the joint management of protected areas for conservation in several parts of the country, including in Kimberley. The creation and joint management of those protected areas allow traditional owners to continue to enjoy their customary practices, while providing conservation and direct employment opportunities for indigenous peoples. The Special Rapporteur was also encouraged by the highly successful government-funded indigenous rangers' programme, which supports indigenous peoples' connection to their lands, encourages cultural knowledge transfer, provides skilled employment and simultaneously contributes to conservation.[26]

103. During the visit, she was informed about successful native title claimants who wished to declare their lands protected areas but faced administrative obstacles in doing so. She encourages the authorities to take steps to facilitate the extension of protected areas

[25] See https://freedomhouse.org/report/freedom-world/2016/australia.

[26] See www.dpmc.gov.au/indigenous-affairs/environment/indigenous-rangers-working-country.

when requested by Aboriginal and Torres Strait Islander Peoples. Following her mission, she was pleased to learn about the designation of additional federal funding allocations for protected areas.

VI. Conclusions and recommendations

104. **While the Government has adopted numerous policies to address the socioeconomic disadvantage of Aboriginal and Torres Strait Islanders, those policies do not duly respect the rights to self-determination and to full and effective participation. The compounded effect of the policies contributes to the failure to deliver on the targets in the areas of health, education and employment in the "Closing the Gap" strategy and fuels the escalating and critical incarceration and child removal rates of Aboriginal and Torres Strait Islanders. Comprehensive revision of the policies needs to be a national priority, and the consequences and prevalence of intergenerational trauma and racism must be acknowledged and addressed. Aboriginal and Torres Strait Islanders require better recognition and active participation in Australian society.**

105. **The Special Rapporteur was particularly impressed and inspired by the strength of spirit and commitment of Aboriginal and Torres Strait Islanders to develop innovative measures to support their own communities. Over the past decade, indigenous-led peak bodies have been established and have grown in a wide range of areas, and have developed valuable expertise. In June 2016, the "Redfern Statement" was launched by indigenous peak organizations from all sectors. It lays out six key priority areas and recommendations and covers issues ranging from engagement, health, justice, violence prevention, disability, children and families and calls for a new dialogue with the Government to address some of the major challenges facing Aboriginal and Torres Strait Islander peoples.**

106. **The Special Rapporteur observed effective indigenous community-led initiatives in a range of areas, including public health, housing, education, child protection, conservation and administration of justice, which all have the potential of making immediate positive changes in the lives of Aboriginal and Torres Strait Islanders. The Government could achieve significant progress in realizing the rights of indigenous peoples if it consulted, financially supported and worked hand-in-hand with those organizations.**

Recommendations to the Government

107. **With respect to the institutional and legal framework, the Special Rapporteur recommends that the Government:**

(a) **Place full political weight behind and act on the proposals put forth by the Referendum Council, including the establishment of a "First Nations Voice" in the Constitution and of a commission for treaty negotiation and truth-telling. Such measures would carry momentous significance to resetting the relationship with the First Peoples of Australia;**

(b) **Collaborate closely with and pay due attention to implementation of the recommendations of the Aboriginal and Torres Strait Islander Social Justice Commissioner;**

(c) **Pay due attention to the recommendations of the Parliamentary Joint Committee on Human Rights in its scrutiny reports of draft bills, review of the "Stronger Futures" legislation in the Northern Territory (2016) and inquiry on amendments to the Racial Discrimination Act (2017);**

(d) **Include the United Nations Declaration on the Rights of Indigenous Peoples in the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act of 2011;**

(e) **Create a parliamentary joint committee on indigenous affairs to advance indigenous rights in a bi-partisan manner;**

(f) **Elaborate a comprehensive bill of human rights within the federal Constitution and a human rights act that include due recognition of the provisions in the Declaration.**

108. **Regarding self-determination and participation, the Special Rapporteur recommends that the Government:**

(a) **Revise the "Indigenous Advancement Strategy" and the "Closing the Gap" strategy targets in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, the National Congress, the Indigenous Advisory Council and relevant peak indigenous organizations;**

(b) **Amend the "Closing the Gap" strategy to include specific targets to reduce of detention rates, child removal incidence and violence against women;**

(c) **Renew national partnership arrangements between the Commonwealth and state jurisdictions, enhance coordination between federal- and state-level implementation and improve data collection for more effective annual monitoring of progress;**

(d) **Transfer responsibility for local programme implementation to indigenous-led organizations to build capacity and their ability to exercise self-determination;**

(e) **Reinstate funding for the National Congress and ensure that the Government holds regular meetings to consult with the National Congress;**

(f) **Develop, in partnership with indigenous peoples, a national strategy to give effect to the United Nations Declaration on the Rights of Indigenous Peoples and the World Conference on Indigenous Peoples Outcome Document;**

(g) **Establish mandatory training for civil servants on the provisions in the Declaration, notably the rights to self-determination, participation and free, prior and informed consent.**

109. **Concerning health services, the Special Rapporteur recommends that the Government:**

(a) **Invest in partnerships that recognize the leadership of Aboriginal and Torres Strait Islanders in implementing the National Aboriginal and Torres Strait Islander Health Plan;**

(b) **Increase support for Aboriginal Community Controlled Health Services and training of indigenous health professionals;**

(c) **Provide mandatory training on cultural awareness for non-indigenous medical professionals;**

(d) **Finalize and resource the National Plan for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Well-being and address intergenerational trauma more in more culturally appropriate and effective ways;**

(e) **Provide sustained long-term support for indigenous-led health research.**

110. **On the subject of education, the Special Rapporteur recommends that the Government:**

(a) **Consult with indigenous communities in the development of education policies, implement school curricula that are culturally sensitive and increase the provision of bilingual education;**

(b) **Apply a trauma-informed approach to education that identifies the barriers to attendance and assists parents and families to improve student attendance, rather than the application of financial penalties that further disadvantages children who already live in poverty;**

(c) **Conduct a comprehensive review of the mainstream education curricula to ensure the inclusion of components on Aboriginal and Torres Strait Islander history and the impact of colonization.**

111. **Concerning employment, the Special Rapporteur recommends that the Government reform the Community Development Programme in consultation with indigenous communities, remove discriminatory and punitive measures and reconstruct the unemployment scheme in remote areas around positive incentives and long-term opportunities.**

112. **With respect to housing, the Special Rapporteur recommends that the Government:**

(a) **Take measures, in consultation with indigenous organizations and communities, to develop housing strategies and increase and improve the availability of remote, regional and urban housing. Provide specific housing support to enable Aboriginal and Torres Strait Islander Peoples to remain on their lands rather than migrate to urban areas;**

(b) **Identify and address barriers to housing for families with children and provide urgent responses to families at risk of having a child taken into care when inadequate housing forms part of the risk.**

113. **Concerning incarceration and the administration of justice, the Special Rapporteur recommends that the Government:**

(a) **Ratify as a matter of urgency the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish an independent national preventive mechanism for regular detention monitoring visits;**

(b) **Adopt, through the Council of Australian Governments, solid commitments and a national plan of action to address the incarceration crisis of Aboriginals and Torres Strait Islander peoples as a matter of national priority;**

(c) **Implement the recommendations by the Australian Law Reform Commission Inquiry into the Incarceration of Aboriginals and Torres Strait Islander peoples and the Royal Commission into Youth Detention in the Northern Territory;**

(d) **Abolish paperless arrest and mandatory sentencing laws and review fine default legislation, as their application is discriminatory in practice;**

(e) **Ensure that there are investigations and accountability, both for civil and criminal liability, for abuses and deaths in detention of Aboriginals and Torres Strait Islanders and that the responsibility to provide reparation is assumed by the State;**

(f) **Provide adequate and long-term funding for Aboriginal and Torres Strait Islander legal services based on a national mapping of unmet needs;**

(g) **Introduce custody notification services in all States and Territories;**

(h) **Ensure that culturally appropriate medical care, including mental health services, are available in all detention facilities;**

(i) **Increase the age of criminal responsibility from 10 years to at least 12 years, in accordance with international standards. Detention of children should be a measure of last resort;**

(j) **Withdraw its reservation to the Convention on the Rights of the Child and ensure that no children are held together with adults;**

(k) **Provide all personnel in detention facilities with training on culturally sensitive child care;**

(l) **Conduct a comprehensive assessment of existing diversion and justice reinvestment programmes and replicate, in consultation with local communities, such measures in targeted areas across the country;**

(m) Extend culturally sensitive judicial processes, using the Koori courts in Victoria as a model, to other jurisdictions throughout the country.

114. As regards the removal of children, the Special Rapporteur recommends that the Government:

(a) Ensure that community-led early intervention programmes invest in families, rather than punish them, in order to prevent children from being in contact with the child protection system;

(b) Develop, in consultation with peak indigenous organizations, a national strategy to eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care and to monitor compliance with the Aboriginal and Torres Strait Islander Child Placement Principle;

(c) Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

115. On the matter of Stolen Generations and reparation, the Special Rapporteur recommends that the Government establish a comprehensive national mechanism to ensure that adequate reparation, including compensation, is provided to the victims of the "Stolen Generations" policies.

116. Regarding violence against women, the Special Rapporteur recommends that the Government develop, in close consultation with indigenous women, a specific national action plan on violence against Aboriginal and Torres Strait Islander women.

117. With respect to political participation, the Special Rapporteur recommends that the Government reinforce as a matter of priority measures by the Australian Electoral Commission, in consultation with indigenous organizations, to increase the number of indigenous voters to improve Aboriginal and Torres Strait Islanders' exercise of their right to political participation.

118. Concerning land rights and native title, the Special Rapporteur recommends that the Government:

(a) Review the system with multiple and overlapping legal regimes applicable to native title claims at the federal, state and territory levels, with a view to aligning them with the United Nations Declaration on the Rights of Indigenous Peoples, which does not contain norms requiring proof of continuous occupation of land;

(b) Subject any native title law reform to adequate consultations with all concerned stakeholders;

(c) Train more indigenous legal professionals with expertise on native title in order to allow Aborigine' and Torres Strait Islander communities to engage in land rights claims in an informed manner;

(d) Extend protected areas when requested by Aboriginal and Torres Strait Islander Peoples;

(e) Continue to support the joint management of protected areas and the indigenous rangers programme as these are laudable examples of best practices.